

ORIGINAL

05 - 352

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District	DELAWARE
Name	ARTURO LABOY	Prisoner No.	00003210
Place of Confinement	DELAWARE CORRECTIONAL CENTER 1181 PADDICL ROAD SMYRNA, DELAWARE 19977		
Name of Petitioner (include name under which convicted)	Name of Respondent (authorized person having custody of petitioner)		
ARTURO LABOY	v. STATE OF DELAWARE WANDEN: THOMAS CALHOUN		
The Attorney General of the State of: DELAWARE, JANE BRADY			
PETITION			
1. Name and location of court which entered the judgment of conviction under attack Superior Court New Castle County, Wilmington, Delaware			
2. Date of judgment of conviction February 1994			
3. Length of sentence 44 years			
4. Nature of offense involved (all counts) Assault First, Assault Second, Stalking, Terroristic Threatening and two counts of Possession of a deadly weapon during the commission of a felony			
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <u>N/A</u>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input type="checkbox"/>			

9. If you did appeal, answer the following:

(a) Name of court Delaware Supreme Court

(b) Result Affirmed

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court N/A

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Violation Of Due Process

Supporting FACTS (state briefly without citing cases or law) Petitioner claims that because the state failed to object or file timely motion for reargument, due process required the state to file an Appeal with the Supreme Court as Judge Barron's order, served as a final judgement, and reversal of that order by Judge Ableman, violated his due process, resulted in miscarriage

B. Ground two: ILLEGAL SENTENCING VIOLATING PETITIONER'S 5TH AND 14TH CONSTITUTIONAL AMENDMENT RIGHTS

Supporting FACTS (state briefly without citing cases or law): The Superior Court lacked jurisdiction to reimpose sentence under due process violations, in that the state's failure to object or file timely motion for reargument resulted in a final judgement, thereby requiring the State to file an Appeal before the Hon. Barron's Order could be reversed.

SEE PETITION FOR REMAINING GROUNDS.

C. Ground three: Violation of Due Process in that Judge Abelman had actual and apparent bias, prejudice as well as impartiality against the Petitioner

Supporting FACTS (state briefly without citing cases or law): On a previous occasion Judge Abelman was presiding Judge in a bitter custody battle involving the Petitioner in a Family Court proceeding (SEE EXHIBIT)

D. Ground four: The Delaware Supreme Court's decision denying Petitioner's Appeal was error of law, resulting in due process violation.

Supporting FACTS (state briefly without citing cases or law): The facts supporting Petitioner's claims of bias and due process violations were supported by the record, well settled Delaware and the United States Constitution. Supreme Court's failure has resulted in a complete miscarriage of justice, violating his due process rights to fairness, equal protection

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____ ~~Attala~~ _____

(b) At arraignment and plea _____

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- (c) At trial Jerome Capone - Counselor
- (d) At sentencing Jerome Capone - Counselor
- (e) On appeal Jerome Capone - Counselor
- (f) In any post-conviction proceeding Praise
- (g) On appeal from any adverse ruling in a post-conviction proceeding Praise

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5-22-05

(date)

Curtis Labry

Signature of Petitioner



INmate Lobby
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Legal Mail
J

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